



## **A G E N D A**

### **General Plan/LCP Implementation Committee**

**October 29, 2008**

**3:30 p.m.**

**City Council Chambers**

1. Approve Action Minutes from October 22, 2008

Attachment No. 1

3:30-3:35pm

2. Draft Zoning Code Review

- Review No. 7 - Part 4 - Standards for Specific Land Uses
- Review No. 8 – Nonconforming Uses and Structures

Attachment No. 2

3:35-6:45pm

3. Items for Future Agenda

6:45- 6:55pm

4. Public Comments on non-agenda items

6:55-7:00pm

5. Adjourn to November 5, 2008

Attachments:

1. Draft Action Minutes for October 22, 2008
  2. Draft Code Review No. 7 – Part 4 Standards for Specific Land Uses and Draft Code Review No. 8 – Nonconforming Uses and Structures
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Attachment No. 1

Draft Action Minutes for October 22,  
2008



# CITY OF NEWPORT BEACH GENERAL PLAN/LCP IMPLEMENTATION COMMITTEE

## DRAFT ACTION MINUTES

Action Minutes of the General Plan/LCP Implementation Committee held at the City Council Chambers, City of Newport Beach, on **Wednesday, October 22, 2008**

### Members Present:

X	Ed Selich, Mayor, Chairman
X	Leslie Daigle, Mayor Pro Tem
X	Don Webb, Council Member
X	Barry Eaton, Planning Commissioner
X	Robert Hawkins, Planning Commissioner
X	Michael Toerge, Planning Commissioner

### Advisory Group Members Present:

	Mark Cross
	Larry Frapwell
	William Guidero
X	Ian Harrison
	Brion Jeannette
	Don Krotee
	Todd Schooler
	Kevin Weeda
	Dennis Wood

### Staff Representatives:

X	Sharon Wood, Assistant City Manager
X	David Lepo, Planning Director
	Robin Clauson, City Attorney
X	James Campbell, Senior Planner
X	Gregg Ramirez, Senior Planner
X	Melinda Whelan, Assistant Planner

E = Excused Absence

### Committee Actions

1. **Agenda Item No. 1** – Approval of minutes of October 15, 2008.

**Action:** Committee approved draft minutes.

**Vote:** Consensus

## 2. Agenda Item No. 2 - Zoning Code Re-write

### ▪ **Second Review of Inclusionary Housing Ch. 20.34**

**Action:** Item continued to a date TBD to allow the committee additional time to review the draft.

### ▪ **Review of Non-Residential Development Standards and Transfer of Development Rights**

**Action:** The Committee reviewed comments prepared by Committee members Eaton and Hawkins regarding non- residential development standards and transfer of development rights of the draft code. The Committee and Advisory Members discussed and directed staff to:

- revise Section 20.48.060 subsection F. pg. 3-97 to add language – If appropriate and in compliance with this Chapter, the Director shall approve the landscaping plan.
- delete Section 20.48.070 subsection C.4. pg.3-98
- delete Section 20.48.070 subsection D.2.d. pg. 3-98
- revise Section 20.48.070 G. subsection pg.3-99 to be more general and leave the soil conditioning and mulching requirements up to the preparer of the plan
- revise Section 20.48.070 subsection H.4. and 5. pg. 3-99 to add satellite based controllers as an option
- revise Section 20.48.070 subsection C.3. pg. 3-98 language to require a variety of sized trees and shrubs
- revise Section 20.48.070 subsection F. pg. 3-99 – create more general statement and remove 6" curb
- delete Section 20.48.050 subsection C. pg. 3-96
- revise Section 20.48.060 A. 3-97 – add language to state exempt projects and clarify projects that require landscape plans
- revise Section 20.52.040 Table 3-111 pg. 3-120 under Hotels and Time Shares change parking requirement to “as required by Use Permit”
- re-look at Section 20.52.050 pg. 3-121 subsection A.1.b. and staff will revise accordingly
- revise Section 20.52.50 subsections C.1., C.2., C.3., C.4., and D.1. pg. 3-122 – staff will revise standards accordingly
- revise Section 20.52.050 subsection D.4. pg. 3-125 add reference to Section 20.30.060 Outdoor Lighting
- revise Section 20.52.080 pg. 3-129 to clarify that on-street parking spaces can not be used
- revise Section 20.52.050 to add in-lieu parking requirements
- revise Section 20.56.050 subsection C. pg. 3-186 – add a per employee requirement
- revise Section 20.56.060 pg. 3-187 – staff will look into clarifying language regarding review authority

- revise Section 20.58.040 subsection E. pg. 3-190 – revise to require that Planning Commission hear these requests and recommendation to City Council
- delete Section 20.58.030 subsection B. pg. 3-189

The public provided comments to the Committee and staff regarding:

- Fire Department landscape requirements, led to resolution – add language to Section 20.48.080 to state that if there is a conflict in landscape requirements the Fire Departments' requirements govern
- Section 20.52.040 resolution – revise Table 3-118 for general office need to clarify that parking ratio is based on net floor area and provide a definition of net floor area
- Section 20.58.030 resolution – revise and add subsection E. Hotels and count by rooms
- Coastal Commission review of General Plan status – on Coastal Commission agenda for November 13<sup>th</sup> meeting

**Vote:** Consensus

**3. Agenda Item No. 3 – Items for future agenda**

**Action:** None

**Vote:** None

**4. Agenda Item No. 4 – Public Comments on non-agenda items**

None

**Meeting Adjourned 6:30 p.m.**

## Attachment No. 2

Draft Code Review No. 7 –  
Standards for Specific Land Uses

Draft Code Review No. 8 –  
Nonconforming Uses and Structures

## **Draft Code Review Topic No. 7 – Part 4 Standards for Specific Land Uses**

Chapters/Sections to be discussed at meeting: Specific Land Uses Standards found within Part 4 with a focus on new or revised regulations. Standards found in Part 4 that are not included in the following list are proposed to remain essentially the same as what appears in the existing code.

Note: Alcohol and Eating and Drinking Regulations will be on a future agenda.

### **1. Animal Keeping**

- a. Existing Code: Related to R-A zone only – 20.10.020.E and 20.10.030.H
- b. New Code: Sections 20.60.040 provides development and operational standards for animal keeping

### **2. Animal Sales and Services**

- a. Existing Code: none
- b. New Code: Section 20.60.050 pg. 3-10 – provides provisions for animal boarding/kennels, animal grooming, animal retail sales, and veterinary services

### **3. Drive Through and Drive-Up Facilities**

- a. Existing Code: Section 20.60.075
- b. New Code Section 20.60.080. Existing code does not include any standards. Draft code introduces development standards

### **4. Emergency Shelters**

- a. Existing Code: none
- b. New Code: Section 20.60.100 pg. 4-18 – emergency shelters have been added as a use by right in the OA zone pursuant to state law(SB2)and this section provides development regulations specifically for emergency shelter developments

### **5. Massage Establishments and Services**

- a. Existing Code: Ch. 20.87
- b. New Code: Section 20.60.120 pg. 4-21 – does not differentiate between accessory and independent massage establishments, amortization regulations not necessary to retain



**6. Mixed Use Projects**

- a. Existing Code: Section 20.60.115
- b. New Code: 20.60.130 pg. 4-22 – existing code addressed only the possibility of extended hours and new section provides provisions for the possibility of extended hours with the addition of more specific development standards including uses required on ground-floor, open space, sound mitigation, parking, loading, access, tenant notification, and location of trash

**7. Outdoor Storage, Display, and Activities**

- a. Existing Code: Section 20.60.105
- b. New Code: Section 20.60.150 pg. 4-25 – provides more detailed provisions

**8. Recycling Facilities**

- a. Existing Code: none
- b. New Code: Sections 20.60.170 pg. 4-27 provides development and operational standards for small and large collection facilities

## Draft Code Review Topic No. 8

### Chapter 20.50 - Non-Conforming Uses and Structures

#### 1. Non-Conforming Structures

- Existing Code: Chapter 20.62.
- Draft Code Section: 20.50.040 pg. 3-102
  - Notable Changes:
    - Draft code (Section 20.50.040E) allows changes to a nonconforming structure when necessary to comply with a valid reasonable accommodation request.
    - Draft code (Section 20.50.040F) allows nonconforming structures to add on up to a maximum 50 percent of the gross floor area of the existing structure within a 5 year period by right subject to conditions. Existing code (Section 20.62.040D) allows 25% addition by right, up to 50% with approval of a modification permit, up to 75% with approval of a UP issued by the Director.
    - Draft code (Section 20.50.040G) stipulates that when a structure is nonconforming due to new coastal resource protection regulations, when 50% of the exterior walls are demolished or replaced, the entire structure will need to be made compliant.
    - Draft Code section 20.50.040H implements General Plan policies (*LU6.13.5*, *LU6.20.5*) that allow non-conforming structures in CDM and Balboa Village to be re-built to their existing floor area, height and parking.

#### 2. Non-Conforming Uses

- Existing Code Section: None – This provision was inadvertently taken out as a result of the group home ordinance adoption. The removed provisions allowed the expansion or intensification of non-conforming uses by way of a change in operational characteristics through the approval of a use permit.
- Draft Code Section 20.50.050A pg. 3-103. Use permit required for expansion or intensification of non-conforming nonresidential uses.

#### 3. Non-Conforming Parking

- Existing Code Section 20.62.050
- Draft Code Section 20.50.060 pg. 3-104
  - Notable Changes:
    - Alterations and maintenance allowed per 20.50.040 A-E

- If non-conforming due to not providing the required number of spaces, residential additions limited to 10% of gross floor area for expansion of existing rooms only allowed by right. Existing code allows larger additions subject to modification permit or use permit approval.
- If non-conforming due to the dimensions of the parking spaces, additions larger than 10% may be allowed subject to the approval of a modification permit.
- Non-residential additions are permitted only if the code required parking for the addition is provided.

**5. Repair by involuntary damage (fire, disaster etc.)**

- Existing Code Section 20.62.070 provides reconstruction up to 90% damaged structures by right. A Use Permit is required if Damage exceeds 90%.
- Draft Code Section 20.50.080 pg. 3-107 provides reconstruction up to 75% damage by right and a Modification Permit if damage exceeds 75%.

**4. Abatement Periods.**

- Draft Code Section 20.50.100 pg. 3-109 incorporates portion of recent Group Home Ordinance related to abatement of nonconforming group homes.

## Responses to Barry Eaton's October 25th E-mail

### Chapter 20.60 - Standards for Specific Land Uses

128) Section 20.60.040 (pages 4-8 through 4-10) has 3 pages worth of new "development and operational standards" for animal keeping, according to the staff report. It appears that most of these apply only to the RA zone. Do we have enough property in this zone to warrant all these regulations? **Section 20.60.040 applies to all zones; yes, many of the standards apply only to the RA zone which is made up of only a few properties, however, they reflect current regulations which staff does not recommend changing. The SP-7 Santa Ana Heights Specific Plan regulations will be retained which has specific provisions.**

129) Section 20.60.070 (pages 4-12 & 4-13), relating to Child Day Care Facilities, appear to me to primarily reflect State regulations on these facilities. Is this correct? If they go further than state regulations, can you point out where and how they do so? **The proposed regulations reflect state regulations.**

130) Section 20.60.080 (pages 4-13 & 4-14) introduce new development standards, according to the staff report. Can you point out which ones are new (or are they all new)? Do you have any idea what percent of existing drive through and drive up facilities will be made non-conforming by these new standards? **The development standards in Section 20.60.080 for drive-through and drive-up facilities are all new. The existing code under Section 20.60.075 only gives definitions and simply requires a use permit for drive-through and drive-up facilities.**

131) Section 20.60.100 (pages 4-18 through 4-20) appear to primarily reflect state requirements for Emergency Shelters. Is this correct? If some of the sub sections go beyond the state requirements, can you point out which ones do so? (They all seem pretty reasonable to me.) But, in any event, I think it is highly inappropriate to limit this proposed residential use to only the OA zone (as noted in the staff report), virtually all of which is in the residentially incompatible airport noise restricted area. Has staff researched whether this is consistent with the AELUP (which this Code must be, as I understand it); and, if not, what other zone it could be put in? **Yes, the emergency shelters section reflects state requirements. Emergency shelters are permitted by right within the IG and PI zones along with OA. The Committee could recommend allowing emergency shelters in other commercial zones with a CUP.**

132) The staff report notes that, in regard to Section 20.60.120 (pages 4-21 & 4-22), dealing with Massage Establishments, "...amortization requirements not necessary to retain." Why not? Were they specific to the enactment of the original regulations, have now run their course, and now are no longer relevant? **The amortization is no longer relevant since properties had to be brought**

**into conformance with the existing code by March 25, 1992, which with the differentiation between accessory and independent massage establishments, is consistent with the proposed code.**

133) The staff report states that Section 20.60.130 (pages 4-22 & 4-23), dealing with Mixed Use Projects, introduces a number of new development standards. Were these intended to apply to both small projects, such as those that can be found in Cannery Village, and the much larger projects that may be contemplated in the Airport Area? Would most of the existing Cannery Village projects be consistent with these new standards, or would most of them become non conforming? **Yes, the new development standards apply to all mixed use projects with the exception of the Airport Area, which will be established as part of the comprehensive planning for that area to be implemented by PC text amendments. The Cannery Lofts project discussed and addressed open space, ground floor commercial, noise, parking, and trash. Others may become non-conforming but, most are built to the maximum FAR so it is anticipated that future improvements would be limited to interior alterations and structural upgrades.**

134) Section 20.60.150 (pages 4-25 & 4-26) appears to introduce a number of new development standards for Outdoor storage and other outdoor activities. Outdoor displays seem to be broken down into two categories: those in subsection B.1., that have virtually no restrictions whatever on them, and those in subsection B.2., that have a number of restrictions thereon. What was the rationale for this division? Why would those displays in subsection 2. be limited to the hours of operation of the stores (item 6.), but those displays in subsection 1., including the display of clothing, artworks and food products, not be subject to that limitation (and the others in subsection 2., for that matter)? Why would the restrictions of subsection C.2., restricting outdoor activities from encroaching on required landscaping and/or parking areas, not apply to the displays listed in subsection B.1.? **Subsection 1 applies to outdoor display where screening is not customary or necessary (small retail displays or vehicles) and Subsection 2 covers everything else and requires screening. Subsections B.3 through B.7 apply to all outdoor displays. Subsection B.1. also explains that outdoor displays shall not encroach on required parking areas or landscaped areas.**

#### Chapter 20.50 - Nonconforming Uses and Structures

135) Section 20.50.040.F.4. (page 3-103) states that in the Coastal Zone, the entire structure shall be replaced if 50% or more of the walls are demolished or replaced. What standard applies in non Coastal Zone areas? **Section 20.50.040 F.4. only applies to the Coastal Zone and there is no similar standard in non-coastal areas. Does not require the entire structure be replaced but brought into conformity.**

136) Section 20.50.060.B.1. (page 3-105) apparently permits changes of use, if the new use doesn't require more than 1 parking space per 250 sq. ft. of building area. As we heard at the last meeting, the City's 1/250 standard apparently refers to gross sq. ft. for retail, but net sq. ft. for office. Which would apply to this subsection? **Gross – clarification is needed.**

137) Section 20.50.060.B.3.b. (page 3-105) appears to permit a new use or an expansion to a building that is nonconforming in the provision of parking by providing only the parking required for the difference in use or the expansion, by right. Really? Is this wise? If an old non conforming restaurant or bar doesn't provide any parking at all (even if 30 or 40 spaces are required by code), and it wants to expand by a substantial amount (say, requiring another 10 spaces), it can do that by right by providing only the 10 spaces, with no review at all? Shouldn't a CUP, or at least a MUP, be required for such a situation? **The current code allows up to a 10% expansion while only providing the parking for the expansion. Expansions beyond that require parking for the entire use. Typically a waiver is sought and many are granted when the findings can be made. The expansion of an existing restaurant or bar use or a change in the type of ABC license would likely require an application for an amended CUP per Section 20.60.090 subsection F.2. on page 4-17. A non-conforming restaurant or bar (no CUP) would be subject to the non-conforming use provisions and require CUP review per section 20.50.050.A**

138) Section 20.50.080.B.2. (page 3-107) refers to "subparagraph b, below". I couldn't find such a paragraph. Was this intended to refer to some other subsection? If so, which one? **Reference to "subparagraph b" should be deleted.**

139) Section 20.50.100.B.3. (page 3-109) apparently grants an exception to the Abatement provisions in the Residential Zones when the non conformity is one related to "...number, parking, or use...". Was "use" really intended to be included in this exception? I thought that the issue of "use" in the Residential Zones was the driving force behind this whole regulatory scheme. **The term "use" need not be in this provision.**

140) Section 20.50.B.4.a. (page 3-110) has 3 subsection numbers for 2 subsections. I assume that this is a typographical error - or is there supposed to be a 3rd subsection? **Yes, this is a typographical error. We will remove the extra subsection.**

141) Section 20.50.100.C.1. (page 3-111) refers to "the commission", after pages of regulations referring to the Hearing Officer. I assume this was intended to refer to the "Planning Commission". If so, shouldn't it state that (with capital letters)? Or, if it was intended otherwise, shouldn't it specify which "commission" it is referring to? **As you know we don't use Planning Commission. We use "Commission" throughout. I can't find a place where it is not capitalized.**

Commissioner Hawkins' Policy Questions on Review No. 7 and No. 8  
Part 4 Specific Land Use Standards and Non-Conforming Structures and Uses

1. pg. 4-4 Section 20.60.020 subsection C.1. (Why not a uniform 1,000 '?)

**This is consistent with the existing code. Staff recommends no change.**

2. pg. 4-4 Section 20.60.020 subsection C.2. (PQ: What about the conflicts between City facilities and adult businesses? Are City facilities subject to the zoning code? If not, then how can there be separation from such facilities? )

**City facilities are subject to the Zoning Code when the City elects to apply the code to the facility. The separation requirement applies to the adult business and would not limit the city from locating a facility within the separation distance. If the City did locate a facility closer than the separation distance, the adult business would become nonconforming and be allowed to remain pursuant to applicable nonconforming use provisions of the code.**

3. pg. 4-19 Section 20.60.100 subsection D.1. (Why so close? Why about greater separation?)

**State law mandates that a City can only require a 300-foot separation.**

4. pg. 4-19 Section 20.60.100 subsection E.3. (1,000'?) and pg. 4-20 subsection E.4. (on-site?)

**OK**

5. pg. 4-22 Section 20.60.130 (PQ: We have changed the code so that mixed use must comply with the Noise Ordinance. This section must have the same protections. Repeat that it must comply here?)

**OK**

6. pg. 4-22 Section 20.60.130 subsection C.1. (What about customers?)

**We will clarify.**

7. pg. 4-22 Section 20.60.130 subsection C.2. ( add "and for their customers and the public")

**Depends on design.**

8. pg. 4-23 Section 20.60.130 subsection D. (Insert compliance with Noise Ordinance)

**OK – However, since mixed-use districts are non-residential, non-residential noise standards should apply.**

9. pg. 4-28 Section 20.60.170 subsection B.1. (change 100 feet to 500 feet)

**Staff recommends 300 feet**

10. pg. 3-104 Section 20.50.060 subsection A. (add “only” and replace shall with “may”)

**OK**

11. pg. 3-106 Section 20.50.070 subsection C.1.c. (Why 2003?)

**Date identified in original Landmark Ordinance. No change recommended.**

12. pg. 3-106 Section 20.50.070 subsection D.1. (add “shall”?)

**OK**

13. pg. 3-107 Section 20.50.080 subsection B.1. ( the City should hire the independent appraiser and the property should pay for it.)

**Staff believes a licensed appraiser retained directly by the applicant is sufficient.**

14. pg. 3-109 Section 20.50.100 subsection B.1.a. (change date to May, 2009)

**Staff recommends the date remain May 21, 2008. The dates reflect the date as adopted as part of the group home ordinances.**